No. 441

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT.

FRANK C. ROBERTSON,
Plaintiff in Error

vs.

BLAINE COUNTY,
Defendant in Error

TRANSCRIPT OF RECORD.

Error to the Circuit Court of the United States for the District of Idaho, Central Division.

INDEX.

In the Circuit Court of the United States, in the District of Idaho, and in the Central Division thereof.

FRANK C. ROBERTSON,
Plaintiff,

vs.

BLAINE COUNTY,
Defendant.

Complaint.

This plaintiff, a resident of Miles City, State of Montana, and a citizen of said State, complains of said defendant, Blaine county, a county of the State of Idaho, and a public political corporation organized and existing under the laws of the State of Idaho, situate in the Central Division of the District of Idaho, and complaining, avers:

I.

That this plaintiff is, and at the time of the commencement of this action, and at the several times herein mentioned was, a citizen of the State of Montana, domiciled therein.

II.

That the defendant is, and at and during all the times herein mentioned since March 5th, 1895, was a county of the State of Idaho, situate in the Central Division of the District of Idaho, and was and is a body politic and corporate, organized and existing by and under the laws of Idaho, and as such has power to sue and be sued.

III.

That prior to, and from and after 1880, and continuously to March 5, 1895, there was in Idaho a certain county of Idaho, known, named, and being Alturas county, and that during all the times of its existence it was a body politic and corporate, a public political corporation and county of Idaho; that in 1883, and down to 1889, said Alturas county embraced within its borders all the lands and property in the territory of Idaho which now form all of said Blaine county, all of Lincoln county, all of Elmore county, and portions of Bingham, Bannock, and Fremont counties.

IV.

That the Legislature of the then territory of Idaho, by an act entitled, "An Act providing for the erection of a courthouse and jail at Hailey, the county seat of Alturas county," approved February 8, 1883, authorized and required the said county of Alturas to erect a county courthouse and jail at the town of Hailey, the county seat of said county, and for that purpose authorized and requir-

ed said Alturas county to issue forty thousand dollars in negotiable bonds, in denominations of five hundred dollars and one thousand dollars, bearing interest at the rate of six per cent per annum, payable January 1st of each year, and required that the principal of said bonds become due and payable November 1, 1891, and that said bonds should be registered and numbered, as will more fully appear by reference to said act; and said act provided that "The Board of County Commissioners of said county shall, at the time of levy of county taxes, include therein a levy of sufficient tax to meet the interest and principal of said bonds as the same shall become due, and the tax so levied shall be known as the Courthouse Bond Tax, and shall be collected as other taxes are collected, and shall constitute a separate fund, and shall be used for no other purpose. And for the payment of said bonds, principal, and interest, all the taxable property of said county is hereby pledged."

V.

That under and in pursuance of said act the principal officers of said Alturas county caused said courthouse and jail to be erected at said town of Hailey, and the same was so erected and accepted and used, and is still used by the defendant as a courthouse and jail.

VI.

That under the provisions of said act the Board of County Commissioners of said Alturas county secured the engraving and printing of said bonds, and placed the

same in the hands of the county treasurer of said Alturas county, who thereupon negotiated and sold the same, as required by said act, and not otherwise; and no expense whatever that was incurred in carrying out the provisions of said act and building said courthouse and jail was charged to or paid out of any funds other than arose from the sale of said bonds.

VII.

That said bonds are dated May first, 1883, and became due and payable November first, 1891, and that at the time they were negotiated they were numbered in two series—that is to say, the thousand dollar bonds were consecutively numbered in one series, and the five hundred dollar bonds were consecutively numbered in a distinct series, and they were payable to bearer at the office of the county treasurer of said county, at Hailey, the county seat of said county; bore interest at the rate of six per cent per annum, payable January first of each year, except the interest from January first to November first, 1891, which was payable at the maturity of said bonds; and a part of said bonds are in the denomination of one thousand dollars each, and the residue are in the denomination of five hundred dollars each, and each of said bonds expressed on its face the amount for which it was issued, when due, and the rate of interest, and was signed by the chairman of the Board of County Commissioners of said county, was attested by the clerk of said board with his seal, and was countersigned by the treasurer of said county, and by him numbered and register-

ed; and each of said bonds, when negotiated, had interest coupons attached, payable to bearer, whereby said Alturas county promised to pay to bearer the interest that should accrue on said bonds, as the same became due, as aforesaid; and each of said bonds, except as to the number thereof, which are consecutive, and the principal sum, which is either one thousand dollars or five hundred dollars, is in words and figures as follows, to-wit:

(United States)	(No. 19.)	(Territory)
(of America.)	Alturas County.	(of Idaho.)

COURTHOUSE BOND.

($500)

Know All Men by These Presents, that the county of Alturas, in the Territory of Idaho, acknowledges itself to be indebted, and for value received promises to pay to H. G. Knapp, or bearer, the sum of (five hundred dollars), lawful money of the United States of America, at the office of the county treasurer of Alturas county, at Hailey, the county seat thereof, on the first day of November, in the year of our Lord one thousand eight hundred and ninety-one, with interest thereon at the rate of six per cent per annum, payable annually on the first day of January, of each year at said county treasurer's office, upon the presentation and surrender of the annexed coupons for said interest, as they severally become due. This bond is executed and issued for the purpose of erecting a courthouse and jail at Hailey, in said county, and under the provisions and in pursuance of an act of the legisla-

tive assembly of the territory of Idaho, entitled "An Act providing for the erection of a courthouse and jail at Hailey, the county seat of Alturas county," and approved February 8th, A. D. 1883.

In testimony whereof, and in accordance with said act, the county of Alturas hereby pledges its full faith, credit, and property for the punctual payment of this bond and the interest thereon, as aforesaid, and has authorized the same to be signed by the chairman of the Board of County Commissioners of said county, attested by the auditor and recorder, ex-officio clerk of said board, with his official seal, and countersigned by the treasurer of said county, as witness their hands and said official seal affixed hereto at said county.

Executed at Hailey, the county seat of said Alturas county, this first day of May, A. D. 1883.

J. K. MORRILL,

Chairman of the Board County Commissioners of Alturas county, Idaho Territory.

Attest:

[Seal] C. B. FOX,

Clerk Board of Commissioners.

Countersigned:

J. M. BURKETT,

County Treasurer.

(On back of bond as follows:)

No. (19). Alturas County Courthouse Bond. ($500). Dated 1st May, 1883. Payable Nov. 1st, 1891. Interest 6 per cent per annum. Payable annually on the first day of January.

And the interest coupons attached to each of said bonds when they were negotiated, as aforesaid, were consecutively numbered from one to nine, bore the number of the bond to which they were attached; and except as to the numbers of the coupons, the number of the bond to which they were attached, and the date of payment, and the amount of the coupon, which was the amount of the interest due upon the bond at the maturity of the coupon, said interest coupons were in words and figures following, to-wit:

(No. 8.) ($30.00)

The County of Alturas, in the Territory of Idaho, will pay to bearer (thirty dollars), at the office of the county treasurer of said county on the (first day of January, A. D. 1891), being interest due at said date on bond (No. 19, Nineteen).

J. K. MORRILL,

Chairman Board of County Commissioners, Alturas County, Idaho Territory.

C. B. FOX,

Clerk of Board of County Commissioners.

Countersigned:

J. M. BURKETT,

County Treasurer.

That at time said bonds were so issued under and by the provisions of said act, J. K. Morrill was of the Board of County Commissioners the chairman and acting chairman of said Alturas county; that C. B. Fox was, at time said bonds were issued, the auditor, recorder, and clerk of Board of County Commissioners of said county, and

acting as such; that at time said issue of bonds was made J. M. Burkett was the treasurer and acting treasurer of said county, and that each of said persons signed and each executed and united in the execution and issue of said bonds, as the respective office of each required in the making, signing, executing, and issue of said bonds under the orders and directions of the then Board of County Commissioners of said Alturas county, and so doing and acting were respectively each performing the duties of their respective office, and were each and all fully authorized, empowered, and required to so make, sign, issue, and on behalf of said county execute and issue said bonds, as above set forth; and that said bonds were of the legal and valid indebtedness of said Alturas county from and after the issue of the same, during all the subsequent existence of said Alturas county, and until creation of Blaine county, and were so recognized by said Alturas county and the officers thereof, and subsequently by Blaine county and its officers, in all matters of suit, settlement, and of county affairs, down to time of bringing of this action; and that while said bonds and coupons were owned and held by the predecessors in ownership of plaintiff, the said interest coupons were paid as same became due, down to time coupons No. 7 became due, and that Blaine county recognized said indebtedness as a legal and valid obligation and debt legislated upon it, and promised to pay the same until the time of the institution of these proceedings, when it claimed that the indebtedness was barred by the statute of limitations; and no other defense has ever been set up or claimed on or against said indebtedness.

VIII.

That before maturity of said bonds, and before any of the coupons attached as aforesaid became due, six of said bonds, of the denomination of one thousand dollars each, and numbered in the series of one thousand dollar bonds, as No. 5, 6, 7, 8, 9, and 10, and six of said bonds of the denomination of five hundred dollars, and numbered in the series of five hundred dollar bonds, as No. 2 and 19, 37, 38, 39, and 40, amounting in all to the principal sum of nine thousand dollars (9,000), part of said bonded indebtedness of forty thousand dollars, with interest coupons for all the interest to accrue thereon up to the time of maturity of said bonds, thereto attached, were purchased and owned by a bona fide purchaser, for value, who was then a citizen and resident of the State of New York, and who thereafter removed to and became, and, as affiant is informed and believes, continues to be, a resident and citizen of the State of Washington, and who never was, and is not now, a resident or citizen of the State of Idaho, and who sold and delivered the same to the assignor and grantor of the same, for value, to this plaintiff, who is now the bona fide owner and holder of the bonds and coupons in this allegation described.

IX.

That no part of the principal of said twelve bonds hereinbefore particularly described, amounting to the sum of nine thousand dollars, as aforesaid, part of said bonded indebtedness of forty thousand dollars, has been paid, and the said sum of nine thousand dollars, besides

interest, became due thereon on the first day of November, 1891, and is now due, and was, at the commencement of this action, due, owing, and payable upon the said bonds above described and numbered from said defendant to this plaintiff.

X.

That of said coupons attached to said bonds when issued and negotiated, as aforesaid, coupons No. 7, due January 1, 1890, each for sixty dollars, interest for the year 1889; coupons No. 8, due January 1, 1891, each for sixty dollars, interest for the year 1890; and coupons No. 9, due at maturity of said bonds, November 1, 1891, each for fifty dollars, interest from January 1, 1891, to November 1, 1891, attached to and for interest on said one thousand dollar bonds; No. 5, 6, 7, 8, 9, and 10, respectively, of the series of one thousand dollar bonds; and coupons No. 7, due January 1, 1890, each for thirty dollars, interest for the year 1889; coupons No. 8, due January 1, 1891, each for thirty dollars, interest for the year 1890; coupons No. 9, due at maturity of said bonds, November 1, 1891, each for twenty-five dollars, interest from January 1, 1891, to November 1, 1891, attached to and for interest on said five hundred dollar bonds numbered 2, 19, 37, 38, 39, and 40 of the series of five hundred dollar bonds, at time it was issued and negotiated, amounting in the aggregate to the sum of $1,590 (besides interest from maturity) have not been paid (nor any part or portion of them), and the same are now, and were at the commencement of this action, due and owing upon said coupons from said defendant to this plaintiff, together with

legal interest thereon from the several times when said coupons were due, as aforesaid.

XI.

That said bonds and coupons were, as they respectively matured and became due, and at the several times they became due and payable as aforesaid, presented for payment to the treasurer of said Alturas county while it still existed, and to the treasurer of Blaine county since the creation thereof, and payment thereon demanded by the holder thereof, and payment thereof, or any part thereof, was refused, on ground that there was no money in the treasury applicable to payment thereof. And plaintiff avers that the Board of County Commissioners of said Alturas county neglected and refused to levy any tax to meet the interest and principal or interest or principal of said bonds as they became due (or otherwise or at all), as required by said act of the legislature, in pursuance of which they were issued, and neglected and refused to levy any tax to pay the principal of said bonds or said coupons, so owned and held by the plaintiff, or any part thereof, and continued to so neglect and refuse to levy any tax to pay said bonds and coupons, or any part thereof, down to the time said Alturas county was abolished; and plaintiff avers that on the first day of January, 1890, when said coupons No. 7 matured and became due and payable, there was no money in the treasury of Alturas county legally applicable thereto, for the payment of said coupons or any portion of them, and from thence hitherto there has been no money in the treasury of said Alturas county down to the time it was abolished, for

the payment of the coupons held by plaintiff, or any part or portion of them; and that the then treasurer of said county in reply to said demands of payment so wrote and informed the holder of said bonds and coupons that he could not pay the same for want of funds, and that since the creation of said Blaine county there has never been any levy of a tax to pay said bonds and coupons, or any part or portion thereof, held by plaintiff, by the commissioners of Blaine county, and that since Blaine county has been created there have never been any moneys or funds in the treasury of Blaine county applicable to the payment of said bonds and coupons owned by plaintiff, or any part or portion thereof, and that there has never been any levy of a tax to pay said bonds and coupons, or any part or portion of them, either by Alturas county or by Blaine county, or by any officer or officers thereof, since 1889, and that there is not now and never was any money or funds in the treasury of Blaine county legally applicable to the payment thereof, and that there was not, during the existence of Alturas county, any money or funds legally applicable to the payment of said bonds and coupons, or any part or portion thereof, nor during the entire existence of Alturas county was any tax levied to provide for payment of or on the same, or any attempt, by tax or otherwise, to provide for payment of or on the same; that demand for payment being made, the defendant and its treasurer replied in writing substantially that the same could not be paid for want of funds, and that there were no moneys in the treasury applicable to payment of same.

XII.

That the amount in controversy between the plaintiff and the defendant in this action is the sum of ten thousand five hundred and ninety dollars ($10,590), exclusive of interest, and plaintiff is entitled, by the laws of Idaho, to interest at the rate of ten per cent per annum upon the principal of said bonds from the time they came due, and to like interest upon said coupons from the times they came due respectively.

XIII.

That on March 7, 1889, the then territory of Idaho divided said Alturas county, and from the territory thereof formed the counties of Elmore and Logan, and also gave a large portion of said Alturas county to Bingham county, and in said division act enacted that the indebtedness of old Alturas county, except this said bonded courthouse indebtedness, should be ratably apportioned by accountants appointed for that purpose between the counties of Bingham, Elmore, Logan and Alturas, as then constituted, but that the said courthouse bonded indebtedness should be and remain the indebtedness of Alturas county. Thereupon the county of Alturas, and the officers and people thereof, declared that said apportionment was unfair to Alturas county, and illegal, and that the said courthouse indebtedness should also be apportioned and divided between said new counties and Bingham and Alturas county, and from thence refused to levy any tax to pay said bonds and coupons, and refused to appoint accountants under said act to adjust said indebt-

edness, or to do any other act or thing to provide for or recognize said bonded courthouse indebtedness, and continued so to deny said indebtedness down to Aug., 1894, the time said Alturas county was by mandate ordered to adjust said indebtedness.

In the year 1894 proceedings were brought by Elmore, Bingham, and Logan counties against Alturas county, in the Supreme Court of the State of Idaho, to compel Alturas county to proceed to adjust said indebtedness of old Alturas county under said act of division and apportionment, and such proceedings were had in said court in said matter that said Supreme Court commanded Alturas county to proceed to such apportionment under said act, and thereafter Alturas county and said other counties did, under said act, and under the mandate of said Court, proceed to said adjustment and apportionment, and the same resulted in the report of the accountants being filed in the office of the auditor and clerk of Alturas county and in said office of the said other counties, which report placed and left upon Alturas county the obligation to pay all of said courthouse bonded indebtedness, and the same was then and thereafter assumed and recognized by said Alturas county as its sole indebtedness.

XIV.

On account of said indebtedness and other indebtedness of said Alturas county, the officers and inhabitants thereof took the ground that Alturas county was unable to pay the same, and, making such representations, went

before the next Legislature of Idaho that assembled after said such adjustment of indebtedness, and asked to have said Alturas county abolished and its territory consolidated with the territory of said Logan county, and a new county, called Blaine county, formed, comprising all the territory, property, and inhabitants of both Alturas and Logan counties.

XV.

On March 5, 1895, the Legislature of Idaho passed an act, entitled "An Act to abolish the counties of Alturas and Logan, and to create and organize the county of Blaine." And the first section of said act provides that "The counties of Alturas and Logan are hereby abolished and the county of Blaine is hereby created, embracing all of the territory heretofore included within the boundary lines of said Alturas and Logan counties."

Section two of said act provides that "the county seat of Blaine county is hereby established at the town of Hailey."

Section five of said act provides that "All the real and personal property, county records, books, papers, money, credits, furniture, and fixtures belonging to Alturas and Logan counties shall become the property of Blaine county, and when this act shall take effect, and the proper officers of Blaine county shall have been duly appointed and qualified, as in this act provided, all books, papers, records, money, and personal property belonging to said Alturas and Logan counties shall, by the custodians of the same,

be immediately delivered to the proper officers of Blaine county, who shall give proper receipt and vouchers for the same."

Section seven of said act provides that "All valid and legal indebtedness of Alturas and Logan counties shall be assumed and paid by the county of Blaine."

Section eight of said act provides that "All rights of action now existing in favor of, or against, said Alturas or Logan county, may be maintained in favor of or against Blaine county."

Section thirteen of said act provides that "Whereas an emergency exists, this act shall take effect and be in force from and after its passage." Approved March 5, 1895.

And within five days from and after the approval of said act, the officers of Blaine county were duly appointed and qualified, and were acting, and said Blaine county was fully organized as a county of Idaho.

XVI.

That after Blaine county was created and organized, and on the 18th day of March, 1895, the Legislature of Idaho passed an act entitled "An Act to create the county of Lincoln, to locate the county seat of said county, and to apportion the indebtedness of Blaine county; to attach said county to the Fourth Judicial District, and to attach said county to the Ninth Senatorial District," which said last entitled act creates the county of Lincoln out of territory of Blaine county; and section five of said act enacts and provides that "The indebtedness of Blaine county must be apportioned between the coun-

ties of Blaine and Lincoln in the same ratio that the property of said counties bears to each other, and the territory hereby stricken off and erected into the county of Lincoln must be held to pay its ratable portion of the existing liabilities of the county of Blaine, from which it is taken," and in apportioning the said debt of Blaine county, under said act, the said bonded courthouse indebtedness was put in by Blaine county as a part of its legal and valid indebtedness to be shared by Lincoln county, and said bonded courthouse indebtedness was and is apportioned between said counties of Blaine and Lincoln, and by said apportionment Lincoln county is to pay to Blaine county nearly one-half of said bonded courthouse indebtedness. And the county of Lincoln is by said act required to levy a tax for its portion of said indebtedness, and pay over to Blaine county the money so raised, which said money can only be used by Blaine county to pay off said indebtedness (including said courthouse bonded debt) or the securities into which the same has been funded. And said act took effect and was law from and after its passage, and said Blaine county is now holding said Lincoln county, under and by virtue of said act, to pay it a sum equal to nearly one-half of said bonded courthouse indebtedness, which moneys can be used by Blaine county for the purpose of paying off the original Blaine county indebtedness, including said bonded courthouse debt, and for no other purpose.

XVII.

That the original owner and purchaser of said bonds, especially mentioned and described herein, and the cou-

pons attached thereto, and on which this action was based, was never a citizen or resident of the State or Territory of Idaho, and was, at the time of his selling and transferring the same to the assignor and grantor of plaintiff, a resident and a citizen of the State of Washington, and this action might have been maintained in this court to recover the judgment herein demanded if no assignment or transfer had ever been made of said bonds and coupons herein particularly described, and alleged to be owned by this plaintiff.

Wherefore, plaintiff demands judgment against defendant for the sum of nine thousand three hundred sixty dollars ($10,590), with interest on $9,000, the principal sum of said bonds, from the first day of November, 1891, at the rate of ten per cent per annum; and like interest on $540, the amount of said coupons No. 7, from the first day of January, 1890; and like interest on $540, the amount of said coupons No. 8, from the first day of January, 1891; and like interest on $450, the amount of said coupons No. 9 from Nov. 1, 1891, and for like interest on said judgment; and for plaintiff's costs and disbursements in this action.

SELDEN B. KINGSBURY,
Attorney for Plaintiff.

State of Montana, }
County of ————. } ss.

Frank C. Robertson, being duly sworn, says: I am the plaintiff in the above-entitled action; I have read the foregoing complaint and know the contents thereof, and that the same is true of my own knowledge, except as to

the matters therein stated to be on information and belief, and as to those matters I believe it to be true.

FRANK C. ROBERTSON.

Subscribed and sworn to before me this 9 day of September, 1897.

[Seal] J. W. STREVELL,
Notary Public.

State of Idaho, }
County of Ada. } ss.

Selden B. Kingsbury, being duly sworn, says: I am attorney for plaintiff in above-entitled action; I have read the foregoing complaint and know the contents thereof, and that same is true of my own knowledge, except as to matters therein stated on information and belief, and as to those matters I believe it to be true; the reason why I verify this complaint is because plaintiff is not in and does not reside in Ada county, Idaho, where I reside.

S. B. KINGSBURY.

Subscribed and sworn to before me this 2d day of December, 1897.

A. L. RICHARDSON,
Clerk.

[Endorsed]: No. 136. In the Circuit Court of the United States in the District of Idaho and in the Central Division thereof. Frank C. Robertson, Plaintiff, v. Blaine County, Defendant. Complaint. Filed Sept. 30th, 1897. A. L. Richardson, Clerk.

In the Circuit Court of the United States for the District of Idaho.

FRANK C. ROBERTSON,
Plaintiff,
vs.
BLAINE COUNTY,
Defendant.

Stipulation to Amend Complaint.

It is hereby stipulated by and between the attorneys herein, in the above-entitled action, for the respective parties herein that the plaintiff may amend his complaint by interlineation.

SELDEN B. KINGSBURY,
Attorney for Plaintiff.
LYTTLETON PRICE,
Attorney for Defendant.

[Endorsed]: No. 136. Circuit Court U. S., Idaho Dist. Frank C. Robertson, Plaintiff, v. Blaine County, Defendant. Stipulation to amend complaint. Filed Dec. 2d, 1897. A. L. Richardson, Clerk.

In United States Circuit Court, District of Idaho.

FRANK C. ROBERTSON,
Plaintiff,
vs.
BLAINE COUNTY,
Defendant.

Acknowledgment of Service.

I hereby accept and acknowledge service of the original complaint as amended by interlineation.

LYTTLETON PRICE,
Defendant's Attorney.

[Endorsed]: No. 136. U. S. Circuit Court, District of Idaho. Frank C. Robertson, Plaintiff, v. Blaine County, Defendant. Acknowledgment of service. Filed Dec. 4th, 1897. A. L. Richardson, Clerk. Selden B. Kingsbury Atty. for Plaintiff.

In the Circuit Court of the United States for the District of Idaho.

FRANK C. ROBERTSON,

Plaintiff,

vs.

BLAINE COUNTY,

Defendant.

Demurrer.

Comes now the above-named defendant and demurs to the plaintiff's complaint herein, and as ground of demurrer specifies:

That the said complaint does not state facts sufficient to constitute a cause of action.

That the alleged cause of action in said complaint set forth is barred by the provisions of section 4052 of the Revised Statutes of the State of Idaho.

Wherefore, defendant prays judgment whether it shall further answer the said complaint, and for such further orders as may be proper in the premises.

LYTTLETON PRICE,
Defendant's Attorney.

[Endorsed]: No. 136. In the U. S. Circuit Court of the United States, District of Idaho. Frank C. Robertson, v. Blaine County. Demurrer. Filed Dec. 10, 1897. A. L. Richardson, Clerk.

In the Circuit Court of the United States for the District of Idaho.

FRANK C. ROBERTSON,
Plaintiff,

vs.

BLAINE COUNTY,
Defendant.

Decision on Demurrer.

SELDEN B. KINGSBURY, for Plaintiff.
LYTTLETON PRICE, for Defendant.

To the complaint herein the defendant demurred, pleading the statute of limitations.

From the complaint it appears that by an act of the territorial Legislature, approved February 8, 1883, the issue by Alturas county of the bonds herein sued upon was authorized for the purpose of building in said county a courthouse and jail, the principal of such bonds "to become due and payable November 1, 1891"; that "the Board of County Commissioners of said county shall, at the time of levy of county taxes, include therein a levy of sufficient tax to meet the interest and principal of said bonds as the same shall become due, and the tax so levied shall be known as the Courthouse Bond Tax, and shall be collected as other taxes are collected, and shall constitute a separate fund, and shall be used for no other purpose. And for the payment of said bonds, principal and interest, all the taxable property of said county

is hereby pledged"; that by an act of 1889 Alturas county was divided into Alturas, Logan, and Elmore counties and by an act approved March 5, 1895, Blaine County was organized out of the territory composing Alturas and Logan counties, and it was provided by section 7 that "All valid and legal indebtedness of Alturas and Logan counties shall be assumed and paid by the county of Blaine," and by section 8 that "All rights of action now existing in favor of or against said Alturas or Logan county may be maintained in favor of or against Blaine county"; that on the 18th day of March, 1895, the Legislature passed another act, cutting off from Blaine county the county of Lincoln. By this last act it appears that Blaine county was left composed chiefly of the territory which had, just prior to the passage of the two last named acts, constituted Alturas county. By section 4052, Idaho Revised Statutes, it is provided that "an action upon any contract, obligation, or liability not founded upon an instrument in writing" must be commenced within five years from the time it becomes due, and that this action was commenced September 30, 1897.

1. The plaintiff claims that the statute of limitations does not apply; first, because by the act creating Blaine county the debt was, at that date, renewed and legislated upon Blaine; and second, because neither Alturas nor Blaine county has ever levied any tax or in any manner raised any funds applicable to the payment of the debt.

While counsel in support of his proposition that this debt is to be treated as contracted on March 5, 1895, cites among other authorities, Angell on Limitations, and Ballard v. Bell, 4 Fed. Cases, from which the argument

would seem to follow that such a debt as this is a "specialty" and a creature of statute, and that to such the statute of limitations does not apply, it must be observed that those authorities refer to the statute of limitations of King James, which applied to "actions of debt grounded on any lending or contract without specialty." Certainly under that statute, specialties, which were only a higher grade of contracts because sealed, were excepted from its operation, so also debts created by statute were not included thereunder. But the Idaho statute sweeps away all those intricate distinctions, as well as the much learning displayed in their discussion, and whether the debt here sued upon is a specialty or a creature of statute it is within the intent of the Idaho law, for it includes all kinds of contracts whether under seal or not, and all debts created by statute.

Under this branch of the case certainly the most important question is, when the debt sued upon became due; if not until March 5, 1895, as claimed by plaintiff, then unquestionably it is not barred. But, first, what is the debt sued upon? Plaintiff's counsel says it is in the nature of a specialty; that it was created by statute on the 5th day of March, 1895, and that such act operated to create of the bonds a new debt against Blaine county from that date. The complaint is not framed as upon a new debt, but it alleges all the facts leading up to the issue of the bonds; then copies one to answer for all, which, upon its face, shows it became due November 1, 1891, and demands judgment for "the principal sum of said bonds" for the coupons attached to them and interest. Surely this complaint, upon its face, indicates an action upon

the original bonds, and not upon a debt growing out of them created at a subsequent date.

It cannot be doubted that the Legislature might, at least before the bar of the statute had attached, have extended the time for their payment, or have fixed another date than that first fixed when they should become due. The Legislature has not, at least in explicit terms, done so. Has it done so by implication? All that it seems to have done is by sections 7 and 8, above quoted, which simply direct that all existing indebtedness of Alturas and Logan counties should continue as valid, and be assumed and paid by Blaine, and that the same actions that might have maintained by or against Alturas could be by or against Blaine. It did not in terms create a new debt, but recognized the validity of the old, and that Blaine should pay it, and as there was no pretense of changing the time or manner of payment, it seems clearly to follow that it must be paid by Blaine just as Alturas was to pay it. Blaine county simply took the place occupied by Alturas; it assumed all its burdens, was invested with all its rights. Had Alturas continued to exist and continued responsible for this debt, would it not have been one of its rights to plead the bar of the statute against this claim after five years from November 1, 1891? To me it seems so unquestionably, if a county may ever plead the statute. If this was a right due Alturas why should it not inure to Blaine, upon which is entailed all the burdens? Moreover, while in name Blaine county is a new party, in these transactions, in reality it is substantially the same people and territory which composed Alturas county. It is in substance the

same party by another name continuing responsible for the same debt. The complaint, as well as counsel's brief, refers to the new promise of both Alturas and Blaine counties to pay the debt, but under the Idaho statute, section 4078, no such promise or acknowledgment is sufficient to bar the operation of the statute, "unless the same is contained in some writing signed by the party to be charged therewith." It appears to me that only through a strained construction can it now be held that this action is upon a new promise, or that as to defendant it is to be deemed one created or accruing from March 5, 1895.

2. Under the claim that defendant cannot avail itself of the statute, because neither county had levied a tax or raised funds to pay this debt, it is argued that the duty of paying it is such an express trust upon the county as bars the operation of the statute, and in general support of this proposition, among other citations, are Underhill v. City of Sonora, 17 Cal. 173; Freehill v. Porter, Treasurer, 4 Pac. 646; and County of Lincoln v. Luning, 133 U. S. 529.

If the views advanced by counsel are correct, and they are sustained by these authorities, provided the facts upon which the latter rest are such as to make them applicable to this case, it certainly would seem that a municipal debtor can seldom, if ever, plead limitations. If such a debtor is always a trustee of an express trust; if it must always show it has levied the necessary taxes or actually collected the money to pay the debt before it can so plead, and it seems the argument is nothing less than this, there is little, if any, opportunity for it ever

to plead the statute. Certainly it is the duty of a municipal debtor to pay its debts, and in a sense a trust devolves upon it to do so, but it is likewise as much the duty of an individual debtor to pay his debts, and a like trust devolves upon him to pay. That the municipal debtor acts through its agents and representatives can make its duty to pay and its trusteeship no different from that of the individual debtor. Even if Courts should attempt to make a distinction between the class of debtors in this regard, the Idaho statute under consideration does not, but so far as its phraseology goes it is applied to all alike. It cannot be that these decisions referred to by counsel attempt to strike out all application of the statute to municipal debtors, or that they should be considered as counsel would have them—in fact, in each there is an implication that the statute may be applied to such debtors when the facts justify. Let us examine them briefly. In the Sonora case it appears that before the bonds were due the Legislature extended the time of, and provided a special fund for, their payment, and this legislative act was subsequently repeated. The Court says the recognition of the debt and the making of provision for its payment by the Legislature "is enough to withdraw the case from the operation of the statute," but in addition to this, conceding the power of the Legislature to so extend the time of payment, it was in this case so extended from time to time that the debt never became barred. These facts are far different from those in this case. Here the Legislature recognized the debt, but did not extend the time of payment, nor did it provide any special tax, fund, or means of pay-

ment, but the whole question of the time and means was left as in the original bill. In the case of Freehill v. Porter the facts are too briefly stated for its full understanding; it does appear, however, that fifty-five per cent of certain revenue provided for was set apart for the payment of the bonds and their interest, and that this fund so expressly devoted to this special purpose had been diverted by some of the officers of the corporation. The opinion says that "according to the act of 1863 (not recited) no action could be maintained against the city on these bonds or coupons," and also it says, as claimed by counsel in this case, that "it was the duty of the city to make provision for the payment of the bonds and coupons according to the statute under which they were issued, and by omitting to perform such duty the city could not create the defense of the statute of limitations; not until the funds were in the treasury, properly available, would the statute begin to run; not until that period would the petitioner have any right of action or proceeding against the treasurer. "Why not? Presumably from some provision of the statute specially applicable to the matter. It will be noted also that this was an action of mandamus against the treasurer, probably to pay out the funds collected under the law for this very purpose. While the facts are not fully reported, there is sufficient in the case to show it is not like the one under consideration, and that it is not a guide for it.

In the 133 U. S. it is said that "By the general limitation law of the State some of the coupons were barred, but there has been this special legislation in reference to these coupons. The bonds were issued under the

funding act of 1873; in 1877 the county was delinquent in its interest and the Legislature passed an act amendatory to the act of 1873. This amendatory act provided for the registration of overdue coupons, and imposed upon the treasurer the duty of thereafter paying the coupon, as money came into his possession applicable thereto in the order of their registration. (Stat. of Nev. 1877, 46.) The coupons, which by the general limitation law would have been barred, were presented as they fell due to the treasurer for payment, and payment demanded and refused, because the interest fund was exhausted. Thereupon the treasurer registered them as presented, in accordance with the act of 1877, and from the time of their registration to the commencement of this suit there was no money in the treasury applicable to their payment. This act providing for registration and for payment in a particular order was a new provision for the payment of these bonds, which was accepted by the creditor, and created a new right upon which he might rely. It provided, as it were, a special trust fund to which the coupon holder might, in the order of registration, look for payment, and for payment through which he might safely wait. It amounted to a promise on the part of the county to pay such coupons as were registered in the order of their registration, as fast as money came into the interest fund, and such promise was by the creditor accepted, and when payment is provided for out of a particular fund, to be created by the act of the debtor, he cannot plead the statute of limitations until he shows that the fund has been provided." The opening sentence of the above quotation says that certain

coupons were already barred, but for those in question there had been such special legislation as protected them against the statutes. This special legislation was in part that the treasurer should thereafter pay the "coupons as money came into his possession applicable thereto in the order of their registration"; that is, the coupons were not payable, not due, until the money was actually in the treasury to pay them. Certainly under such a provision the statute of limitations could not begin to run until such event occurred, and this is all that is decided. It further appears that from the registration of these coupons to the commencement of the suit there was no money in the treasury, hence the coupons could not have been barred. Thus in all these cases where the statute was held not to obtain it distinctly appears there had been such legislation as extended the time of payment, or as set apart a special fund for payment, and so dedicated to this special purpose as well might constitute an express trust.

As appears, the law applicable to this case is quite different. There certainly is nothing in it which prevented the holder of the bonds after November 1, 1891, from maintaining his action thereon; there never was any fund dedicated specially to the payment of these bonds, nor any special provision for their payment except the general one in the original act before referred to. If that is sufficient to constitute such a special fund or such an express trust as to avoid the operation of the statute, then, as before said, it is virtually a dead letter as to all municipal debtors, for every law authorizing the issue of bonds makes such general provision for their

payment, and yet it has been often held that actions upon them become barred by neglect.

If this were simply a question of ethics, the demurrer would be overruled, but being one of law alone it is sustained.

While for personal reasons I would have avoided considering this case, yet there being no legal objections nor any suggestions to the contrary made, I have heard it, but hope it will be taken to another Court for review.

Boise, Idaho, January 31st, 1898.

BEATTY,

Judge.

At the request of plaintiff's counsel ten days is allowed him in which to amend the complaint.

BEATTY,

Judge.

To the above ruling sustaining the demurrer, the said plaintiff, by his counsel, then and there duly excepted and the same is allowed.

BEATTY,

Judge.

After the foregoing decision the plaintiff amended his complaint, to which defendant interposed its demurrer. It is not found that the amendments to the complaint are such as to justify a change in the above ruling, therefore the present demurrer is sustained.

Boise, Idaho, March 1, 1898.

BEATTY,

Judge.

[Endorsed]: No. 136. Robertson v. Blaine County. Decision on Demurrer. Filed Feb. 1, 1898. A. L. Richardson, Clerk.

In the Circuit Court of the United States, District of Idaho.

FRANK C. ROBERTSON,
Plaintiff,

vs.

BLAINE COUNTY,
Defendant.

Notice of Motion to Strike Out Amended Complaint.

To Selden B. Kingsbury, Esq., Plaintiff's Attorney.

Dear Sir: Please take notice that I shall present the motion to strike out the plaintiff's amended complaint filed herein, a copy of which is attached hereto and served upon you, to the said Circuit Court, at the courtroom thereof, at Boise, Idaho, on the first day of the next ensuing term of said Court, or as soon thereafter as counsel can be heard; or at such time before the next term of said court as the Judge thereof will hear the same upon agreement between us for its submission.

Very respectfully yours,

LYTTLETON PRICE,
Defendant's Attorney.

In the Circuit Court of the United States, District of Idaho.

FRANK C. ROBERTSON,

Plaintiff,

vs.

BLAINE COUNTY,

Defendant.

Motion to Strike Out Amended Complaint, and Withdrawal of Motion.

The defendant above named moves to strike out the plaintiff's amended complaint filed herein on the following grounds, to-wit:

That the matters and things therein set forth and alleged as a cause of action which were not contained and alleged in the original complaint herein, constitute another and different cause of action from that alleged in the said original complaint. That is to say: In and by the said original complaint the plaintiff alleges the bonds and coupons of Alturas county and the act of the Legislature of Idaho imposing the payment thereof upon the defendant and granting and allowing to the holder of the said bonds any and all actions he had against Alturas county, against the county of Blaine, and to be maintained against it the same as it might have been against the county of Alturas, as the cause of action therein stated. And in and by the said amended complaint the plaintiff sets forth and alleges certain allegations of fact calculated and intended to show and state a claim and demand against the defendant for debt, independent of the con-

tract and obligation of the said bonds of Alturas county, and a specific assumption of and promise by the defendant to pay the same, and constitute a departure from the cause of action set forth in the original complaint, and offer a new, separate, and distinct cause of action from that offered and tendered in the said original complaint. That the said amended complaint therefore does not cure the original complaint in the particulars upon which the defendants demurrer thereto was sustained, nor change the cause of action as therein alleged in any substantial particular, but adds to and supplements if with allegations of fact not germane to the cause of action therein alleged. And that such added and supplemental allegations, to the extent that they constitute any cause of action, are incongruous and inconsistent, and not in harmony with the cause of action alleged in said original complaint.

LYTTLETON PRICE,
Defendant's Attorney.

The defendant herein hereby withdraws the within motion to strike out the amended complaint.

LYTTLE. PRICE,
Defendant's Attorney.

[Endorsed]: No. 136. U. S. Circuit Court, District of Idaho. Frank C. Robertson, v. Blaine County. Notice and motion to strike out, etc. Filed Feb. 26, 1898. A. L. Richardson, Clerk.

In the Circuit Court of the United States, in the District of Idaho, and in the Central Division thereof.

FRANK C. ROBERTSON,
Plaintiff,
vs.
BLAINE COUNTY,
Defendant.

Plaintiffs' Amended Complaint filed by permission of Court first had and obtained.

Amended Complaint.

This plaintiff, a resident of Miles City, State of Montana, and a citizen of said State, complains of said defendant, Blaine county, a county of the State of Idaho, and a public political corporation organized and existing under the laws of the State of Idaho, situate in the Central Division of the District of Idaho, and complaining, avers:

I.

That this plaintiff is, and at the time of the commencement of this action, and at the several times herein mentioned, was, a citizen of the State of Montana, domiciled therein.

II.

That the defendant is, and at and during all the times herein mentioned since March 5th, 1895, was, a county of the State of Idaho, situate in the Central Division of the District of Idaho, and was and is a body politic and corporate, organized and existing by and under the laws of Idaho, and as such has power to sue and be sued.

III.

That prior to, and from and after 1864, and continuously to March 5, 1895, there was in Idaho a certain county of Idaho, known, named, and being Alturas county, and that during all the times of its existence it was a body politic and corporate, a public political corporation, and county of Idaho; that in 1883, and down to 1889, said Alturas county embraced within its borders all the lands and property in the territory of Idaho which now form all of said Blaine county, all of Lincoln county, all of Elmore county, and portions of Bingham, Bannock, and Fremont counties.

IV.

That the Legislature of the then territory of Idaho, by an act entitled "An Act providing for the erection of a courthouse and jail at Hailey, the county seat of Alturas county," approved February 8, 1883, authorized and required the said county of Alturas to erect a county courthouse and jail at the town of Hailey, the county seat of said county, and for that purpose authorized and required said Alturas county to issue forty thousand dollars in negotiable bonds, in denominations of five hundred dollars and one thousand dollars, bearing interest at the rate of six per cent per annum, payable January 1st of each year, and required that the principal of said bonds become due and payable November 1, 1891, and that said bonds should be registered and numbered, as will more fully appear by reference to said act, hereby expressly referred to; and said act provided that "The

board of county commissioners of said county shall, at the time of levy of county taxes, include therein a levy of sufficient tax to meet the interest and principal of said bonds as the same shall become due, and the tax so levied shall be known as the Courthouse Bond Tax, and shall be collected as other taxes are collected, and shall constitute a separate fund, and shall be used for no other purpose. And for the payment of said bonds, principal, and interest, all the taxable property of said county is hereby pledged"; and "that all unexpended balances remaining in the hands or custody of said treasurer shall, on completion of said building, be carried into the general fund of said county."

V.

That under and in pursuance of said act the principal and proper officer of said Alturas county caused said courthouse and jail to be erected at said town of Hailey, as by said act required, and the same was so erected and accepted and used thereafter by Alturas county, and is now owned by defendant, and is used by the defendant as its courthouse and jail.

VI.

That under the provisions of said act the Board of County Commissioners of said Alturas county secured the engraving and printing of said bonds therein provided for, and ordered to be issued; and did concerning the same as and all required by said act, and placed the same in the hands of the county treasurer of said Alturas coun-

ty, who registered and numbered the same, and did on, with, and concerning the same as by said act then required, and who thereupon negotiated and sold the same, as required by said act, and not otherwise; and no expense whatever that was incurred in carrying out the provisions of said act and building said courthouse and jail was charged to or paid out of any funds other than arose from the sale of said bonds; and no moneys arising from sale of said bonds were used otherwise than as by said act required.

VII.

That said bonds are dated May first, 1883, and became due and payable November first, 1891, and that at the time they were negotiated they were numbered in two series; that is to say, the thousand dollar bonds were consecutively numbered in one series, and the five hundred dollar bonds were consecutively numbered in a distinct series, and they and their interest coupons were payable to bearer at the office of the county treasurer of said county, at Hailey, the county seat of said county; bore interest at the rate of six per cent per annum, payable January first of each year, except the interest from January first to November first, 1891, which was payable at the maturity of said bonds; and a part of said bonds are in the denomination of one thousand dollars each and the residue are in the denomination of five hundred dollars each; and each of said bonds expressed on its face the amount for which it was issued, when due, and the rate of interest, and was signed by the chairman of the Board

of County Commissioners of said county, was attested by the clerk of said board with his seal, and was countersigned by the treasurer of said county, and by him numbered and registered; and each of said bonds, when negotiated, had interest coupons attached, payable to bearer, whereby said Alturas county promised to pay to bearer the interest that should accrue on said bonds, as the same became due, as aforesaid; and each of said bonds, except as to the numbers thereof, which are consecutive, and the principal sum, which is either one thousand dollars or five hundred dollars, is in words and figures as follows, to-wit:

(No. 19)

United States of America. Alturas county. Territory of Idaho.

COURTHOUSE BOND.

($500.)

Know All Men by These Presents, that the county of Alturas, in the territory of Idaho, acknowledges itself to be indebted, and for value received promises to pay to H. G. Knapp, or bearer, the sum of (five hundred dollars), lawful money of the United States of America, at the office of the county treasurer of Alturas county, at Hailey, the county seat thereof, on the first day of November, in the year of our Lord one thousand eight hundred and ninety-one, with interest thereon at the rate of six per cent per annum, payable annually on the first day of January of each year at said county treasurer's office,

upon the presentation and surrender of the annexed coupons for said interest as they severally become due. This bond is executed and issued for the purpose of erecting a courthouse and jail at Hailey in said county, and under the provisions and in pursuance of an act of the legislative assembly of the territory of Idaho, entitled "An Act providing for the erection of a courthouse and jail at Hailey, the county seat of Alturas county," and approved February 8th, A. D. 1883.

In testimony whereof, and in accordance with said act, the county of Alturas hereby pledges its full faith, credit, and property for the punctual payment of this bond and the interest thereon, as aforesaid, and has authorized the same to be signed by the chairman of the Board of County Commissioners of said county, attested by the auditor and recorder, ex-officio clerk of said board, with his official seal, and countersigned by the treasurer of said county, as witness their hands and said official seal affixed hereto at said county.

Executed at Hailey, the county seat of said Alturas county, this first day of May, A. D. 1883.

[Seal] J. K. MORRILL,

Chairman of the Board County Commissioners of Alturas County, Idaho Territory.

Attest:

[Seal] C. B. FOX,

Clerk Board of Commissioners.

Countersigned,

J. M. BURKETT,

County Treasurer.

(On back as follows:)

(No. 19.) Alturas County Courthouse Bond. ($500.) Dated 1st May, 1883. Payable Nov. 1st, 1891. Interest 6 per cent per annum. Payable annually on the first day of January.

And the interest coupons attached to each of said bonds when they were negotiated, as aforesaid, were consecutively numbered from one to nine, bore the number of the bond to which they were attached; and except as to the numbers of the coupons, the number of the bond to which they were attached, and the date of payment, and the amount of the coupon, which was the amount of the interest due upon the bond at the maturity of the coupon, said interest coupons were in words and figures following, to-wit:

(No. 8.) ($30.00.)

The county of Alturas, in the territory of Idaho, will pay to bearer (thirty dollars), at the office of the county treasurer of said county on the (first day of January, A. D. 1891), being interest due at said date on bond (No. 19, nineteen).

J. K. MORRILL,

Chairman Board of County Commissioners, Alturas County, Idaho.

C. B. FOX,

Clerk of Board of County Commissioners.

Countersigned,

J. M. BURKETT,

County Treasurer.

That at the time said coupon bonds were so issued under and by the provisions of said act, J. K. Morrill was, of the Board of County Commissioners,the Chairman and acting chairman of said Alturas county; that C. B. Fox was, at the time said bonds were issued, the auditor, recorder, and clerk of Board of County Commissioners of said county, and acting as such; that at the time said issue of bonds was made, J. M. Burkett was the treasurer and acting treasurer of said county, and that each of said persons signed and each executed and united in the execution and issue of said bonds, as the respective office of each required in the making, signing, executing, and issue of said bonds under the orders and directions of the then Board of County Commissioners of said Alturas county, and so doing and acting were respectively each performing the duties of their respective offices, and were each and all fully authorized, empowered, and required so to make, sign, issue, and on behalf of said county execute and issue said bonds as above set forth; and that said bonds were of the legal and valid indebtedness of said Alturas county from and after the issue of the same, during all the subsequent existence of said Alturas county, and until creation of Blaine county, and were so recognized by said Alturas county and the officers thereof, and subsequently by Blaine county and its officers, in all matters of suit, settlement, and of county affairs, down to time of bringing of this action; and that while said bonds and coupons were owned and held by the predecessors in ownership of plaintiff, the said interest coupons were paid as same became due, down to time coupon No. 7 be-

came due, and that Blaine county recognized said indebtedness as a legal and valid obligation and debt legislated upon it, and promised to pay the same until the time of the institution of these proceedings, when it claimed that the indebtedness was barred by the statute of limitations; and no other defense has ever been set up or claimed on or against said indebtedness.

VIII.

That before maturity of said bonds, and before any of the coupons attached, as aforesaid, became due, six of said bonds of the denomination of one thousand dollars each, and numbered in the series of one thousand dollar bonds, as Nos. 5, 6, 7, 8, 9, and 10; and six of said bonds, of the denomination of five hundred dollars, and numbered in the series of five hundred dollar bonds, as Nos. 2, 37, 19, 38, 39, and 40, amounting in all to the principal sum of nine thousand dollars ($9,000), part of said bonded indebtedness of forty thousand dollars, with interest coupons for all the interest to accrue thereon up to the time of maturity of said bonds, thereto attached, were purchased and owned by a bona fide purchaser, for value, who was then a citizen and resident of the State of New York, and who thereafter removed to and became, and, as affiant is informed and believes, continues to be, a resident and citizen of the State of Washington, and who never was and is not now a resident or citizen of the State of Idaho, and who sold and delivered the same to the assignor and grantor of the same, for value, to this plaintiff, who became, was, and is the owner and holder of said bonds and said attached coupons, and at time of

bringing this action was and is now the bona fide owner and holder of the bonds and coupons, and of that portion of said Bonded Courthouse Indebtedness represented and evidenced by the same, and in this allegation described.

IX.

That no part of the principal of said twelve bonds hereinbefore particularly described, or of this claim or any claim based thereon or evidenced thereby, amounting to the sum of nine thousand dollars, as aforesaid, part of said bonded indebtedness of forty thousand dollars, has been paid, and the said sum of nine thousand dollars, besides interest, became due thereon on the first day of November, 1891, and is now due, and was, at the commencement of this action, due, owing, and payable, and unpaid, upon the said bonds above described and numbered, and upon this claim so evidenced and based, from said defendant to this plaintiff:

X.

That of said coupons attached to said bonds when issued and negotiated as aforesaid coupons No. 7 due January 1, 1890, each for sixty dollars, interest for the year 1889; coupons No. 8, due January 1, 1891, each for sixty dollars, interest for the year 1890; and coupons No. 9, due at maturity of said bonds, November 1, 1891, each for fifty dollars, interest from January 1, 1891, to November 1, 1891, attached to and for interest on said one thousand dollar bonds No. 5, 6, 7, 8, 9, and 10, respectively, of the

series of one thousand dollar bonds; and coupons No. 7, due January 1, 1890, each for thirty dollars, interest for the year 1889; coupons No. 8, due January 1, 1891, each for thirty dollars, interest for the year 1890; coupons No. 9, due at maturity of said bonds, November 1, 1891, each for twenty-five dollars, interest from January 1, 1891, to November 1, 1891, attached to and for interest on said five hundred dollar bonds Nos. 2, 37, 38, 19, 39, 40 of the series of five hundred dollar bonds at time it was issued and negotiated, amounting in the aggregate to the sum of $1,590, besides interest from maturity, have not been paid, nor has the claim evidenced thereby, nor any part or portion of them or of said claim; and all of the same is now, and was at the commencement of this action, due and owing upon said bonds and said coupons and claim from said defendant to this plaintiff, together with legal interest thereon from the several times when the said coupons were due, as aforesaid.

XI.

That said bonds and coupons were, as they respectively matured and became due and payable as aforesaid, presented for payment to the treasurer of said Alturas county, at his office, while it still existed, and to the treasurer of Blaine county, at his office, since the creation thereof, and payment thereon demanded by the holder thereof, and payment thereof, or any part thereof, was refused, on the ground that, and for the reason given, that there was no money in the treasury applicable to the payment of them, which reason, so given, was in accordance with

the fact; and plaintiff avers that the Board of County Commissioners of said Alturas county neglected and refused to levy any tax to meet the interest and principal or interest or principal of said bonds as they became due (or otherwise or at all), as required by said act of the Legislature, or in any manner or at all, in pursuance of which they were issued, and neglected and refused to levy any tax to pay the principal of said bonds or said coupons, so owned and held by the plaintiff, or any part thereof, and continued so to neglect and refuse to levy any tax to pay said bonds and coupons, or any part thereof, down to the time said Alturas county was abolished; and plaintiff avers that on the first day of January, 1890, when said coupons number seven matured and became due and payable, there was no money in the treasury of Alturas county, legally applicable thereto; that no Courthouse Bond Tax had been levied to pay same or any portion thereof, and that no money was in said special Courthouse Bond Fund, or had ever been, for the payment of said coupons or any portion of them; and from thence hitherto there has been no money in the treasury of said Alturas county, down to the time it was abolished, for the payment of said bonds or any part or portion of them, or for the payment of the coupons held by plaintiff, or any part or portion of them; and that no Courthouse Bond Tax has been levied or collected, and no such fund in anywise created; and that the then treasurer of said county, in reply to said demands of payment, so wrote and informed the holder of said bonds and coupons, and on demand of payment stated "that he could not pay the same for want of funds"; and that since the creation of

said Blaine county there has never been any levy of a tax to pay said bonds and coupons, or any part or portion thereof, held by plaintiff, by the commissioners of Blaine county; and that said commissioners have never levied a Courthouse Bond Tax or any tax to pay same, or any part of same, or at all, and that since Blaine county has been created there have never been any moneys or funds in the treasury of Blaine county, applicable to the payment of said bonds and coupons, and said claim based upon and evidenced thereby, as in said act creating Blaine county provided for, or at all, owned by plaintiff, or any part or portion thereof, and that there has never been any levy of a tax to pay said bonds and coupons, or any part or portion of them, either by Alturas county or Blaine county, or by any officer or officers thereof, since 1889, and that there is not now and never was any money or funds in the treasury of Blaine county legally applicable to the payment thereof, and that there was not, during the existence of Alturas county, any money or funds legally applicable to the payment of said bonds and coupons, or any part or portion thereof, nor during the entire existence of Alturas county was any tax levied to provide for payment of or on the same, or any attempt, by tax or otherwise, to provide for payment of or on the same; that demand for payment being made, the defendant and its treasurer replied in writing, substantially, that the same could not be paid for want of funds, and that there were no moneys in the treasury applicable to the payment of the same; and that, in truth and in fact, no Courthouse Bond Tax has ever been levied to pay same or any part or portion of same, and that said bonds and

said coupons and said claim, so based upon said bonds and coupons and act creating Blaine county, remain wholly unpaid, and that no provisions have ever been made, begun, or attempted by the officers of either Alturas county or of Blaine county to pay same or any portion thereof, other than that said indebtedness was assumed by Blaine county after its organization.

XII.

That the amount in controversy between the plaintiff and the defendant in this action is the sum of ten thousand five hundred and ninety dollars ($10,590), exclusive of interest, and plaintiff is, by the laws of Idaho, entitled to interest at the rate of ten per cent per annum upon the amount of the principal of said bonds from the time they came due, and to like interest upon the amount of said coupons from the times they came due, respectively; and that all claims on contract for money due, by the laws of Idaho, at time said indebtedness was so created drew interest at ten per cent per annum after maturity where the contract was silent as to interest after maturity.

XIII.

That on March 7, 1889, the Legislature of the then territory of Idaho divided said Alturas county, and from the territory thereof formed the counties of Elmore and Logan, and also gave large portions of said Alturas county to Bingham county, and to what are now respectively Fremont and Bannock counties, and in said division act

enacted that the indebtedness of old Alturas county, except this said Bonded Courthouse Indebtedness, should be ratably apportioned by accountants appointed for that purpose, between the counties of Bingham, Elmore, Logan, and Alturas, as then constituted, but that the said Courthouse Bonded Indebtedness should be and remain the indebtedness of Alturas county. Thereupon the county of Alturas and the officers and people thereof declared that said apportionment was unfair to Alturas county, and illegal, and that the said Courthouse Indebtedness should also be apportioned and divided between said new counties and Bingham and Alturas county, and declared that the same was, by virtue of the provisions of the act under which the bonds were issued, a lien upon all the property of Alturas county before division, and from thence refused to levy any tax to pay said bonds and coupons, and refused to appoint accountants under said act to adjust said indebtedness, or to do any other act or thing to provide for or recognize said Bonded Courthouse Indebtedness, and continued so to deny said indebtedness as its sole debt down to August, 1894, the time said Alturas county was by mandate ordered to adjust said indebtedness.

In the year 1894 proceedings were brought by Elmore, Bingham, and Logan counties, against Alturas county, in the Supreme Court of the State of Idaho, to compel Alturas county to proceed to adjust said indebtedness of old Alturas county under said act of division and apportionment, so allotting all of said Courthouse Bonded Debt to Alturas county alone; and such proceedings were had in said court in said matter that said Supreme Court com-

manded Alturas county to proceed to such apportionment under said act and provision, and thereafter Alturas county and said other counties did, under said act, and under the mandate of said Court, proceed to said adjustment and apportionment, and the same resulted in the report of the accountants being filed in the office of the auditor and clerk of Alturas county, and in said office of the said other counties, as by said act required, which report placed and left upon Alturas county the obligation to pay all of said Courthouse Bonded Indebtedness, and the same was then and thereafter assumed and recognized by said Alturas county as its sole indebtedness; but it made no provision for payment of same, claiming to be insolvent and unable to pay the same; and said claim was then warranted by the facts.

XIV.

On account of said indebtedness and other indebtedness of said Alturas county, the officers and inhabitants thereof took the ground that Alturas county was unable to pay the same, and, making such representations, went before the next Legislature of Idaho that assembled after said such adjustment of indebtedness, and asked to have said Alturas county abolished on account of its insolvent condition and the fact that it was unable to pay said and its other indebtedness, and its territory consolidated with the territory of said Logan county, and a new county, called Blaine county, formed, comprising all the territory, property, and inhabitants of both Alturas and Logan counties.

XV.

On March 5, 1895, the Legislature of Idaho passed an act entitled "An Act to abolish the counties of Alturas and Logan and to create and organize the county of Blaine." And the first section of said act provides that "The counties of Alturas and Logan are hereby abolished and the county of Blaine is hereby created, embracing all of the territory heretofore included within the boundary lines of said Alturas and Logan counties."

Section two of said act provides that "The county seat of Blaine county is hereby established at the town of Hailey."

Section five of said act provides that "All the real and personal property, county records, books, papers, money, credits, furniture, and fixtures belonging to Alturas and Logan counties shall become the property of Blaine county, and when this act shall take effect, and the proper officers of Blaine county shall have been duly appointed and qualified as in this act provided, all books, papers, records, money, and personal property belonging to said Alturas and Logan counties shall, by the custodians of the same, be immediately delivered to the proper officers of Blaine county, who shall give proper receipts and vouchers for the same."

Section seven of said act provides that "All valid and legal indebtedness of Alturas and Logan counties shall be assumed and paid by the county of Blaine."

Section eight of said act provides that "All rights of action now existing in favor of or against said Alturas

or Logan county may be maintained in favor of or against Blaine county."

Section eleven of said act provides that "All laws of a general nature applicable to the several counties of this State, and the officers thereof, are hereby made applicable to the county of Blaine."

Section thirteen of said act provides that "Whereas an emergency exists, this act shall take effect and be in force from and after its passage." "Approved March 5, 1895." Particular reference is made to said act, Session Laws of Idaho, 1895, passed at Third Session.

And within five days from and after the approval of said act, the officers of Blaine county were duly appointed and qualified, and were acting, and said Blaine county was fully organized as a county of Idaho.

XVI.

That after Blaine county was created and organized, and on the 18th day of March, 1895, the Legislature of Idaho passed an act entitled "An Act to create the county of Lincoln, to locate the county seat of said county, and to apportion the indebtedness of Blaine county; to attach said county to the Fourth Judicial District, and to attach said county to the Ninth Senatorial District," which said last entitled act creates the county of Lincoln out of territory of said Blaine county; but in section five of said act enacts and provides that "The indebtedness of Blaine county must be apportioned between the counties of Blaine and Lincoln in the same ratio that the property of said counties bears to each other, and

the territory hereby stricken off and erected into the county of Lincoln must be held to pay its ratable portion of the existing liabilities of the county of Blaine, from which it is taken"; and thereafter, in apportioning the said debt of Blaine county under said act, the said Bonded Courthouse Indebtedness was put in by Blaine county as a part of its legal and valid indebtedness "assumed" and to be paid by it, to be shared by and aided by Lincoln county; and said Bonded Courthouse Indebtedness was and is apportioned between said counties of Blaine and Lincoln, and by said apportionment Lincoln county is to pay to Blaine county nearly one-half of said Bonded Courthouse Indebtedness. And the county of Lincoln is, by said act, required to levy a tax for its portion of said indebtedness, and pay over to Blaine county the money so raised which said money can only be used by Blaine county to pay off said indebtedness (including said Bonded Courthouse Debt) or the securities into which the same has been funded, or claim based upon same. And said act took effect and was law from and after its passage, and said Blaine county is now holding said Lincoln county, under and by virtue of said act, to pay it a sum equal nearly to one-half of said Bonded Courthouse Indebtedness. on account of same having been assumed by it, which moneys can be used by Blaine county for the purpose of paying off the original Blaine county indebtedness, including said Bonded Courthouse Debt, and for no other purpose.

XVII.

That the original owner and purchaser of said bonds, especially mentioned and described herein, and the coupons attached thereto, and on which this action was based, was never a citizen or resident of the State or Territory of Idaho, and was, at the time of his selling and transferring the same to the assignor and grantor of plaintiff, a resident and a citizen of the State of Washington, and this action might have been maintained in this court to recover the judgment herein demanded, if no assignment or transfer had ever been made of said bonds and coupons and claim herein particularly described and alleged to be owned by this plaintiff.

XVIII.

That the said Alturas county above referred to, down to the 7th day of March in the year 1889, embraced a territory of 15,120 square miles, had a voting population of 3500 electors, and an assessment roll of $3,837,362.06, that after the said division of said Alturas county in 1889, Alturas county was left with an area of 3,652 square miles, consisting mostly of mountains and lava beds, and containing no agricultural lands; had a voting population of 576 electors in the year 1894, and an assessment roll in the same year of $635,561.76, and was left with an indebtedness of over $400,000, including the said Bonded Courthouse Indebtedness, upon which plaintiff's claim herein is based under provisions of said act creating Blaine county, on account of which the said county of Al-

turas and the people and officers thereof declared that said Alturas county was unable to pay said indebtedness, and refused to levy any tax to pay said bonds and coupons, or to do any other act to provide for the payment of said Bonded Courthouse Indebtedness, and continued so to neglect to make any provision for the payment of the same down to August 4, 1894, when, under and by reason of the mandate of the Supreme Court of the State of Idaho, Alturas county assumed and promised to pay the said Courthouse Indebtedness, and thereafter the said indebtedness was recognized by the said Alturas county as its sole indebtedness; but said county made no provision for any payment of same, and claimed to be unable to pay same, and asked that the county be abolished by the Legislature of the State of Idaho.

The assessed valuation of Alturas county for each year from 1883 to the last one before its abolishment is as follows:

For the year 1883, $2,871,365.57.
For the year 1884, $3,015,336.61.
For the year 1885, $3,424,513.68.
For the year 1886, $3,322,431.71.
For the year 1887, $3,696,600.62.
For the year 1888, $3,837,362.00.
For the year 1889, $814,387.00.
For the year 1890, $649,104.00.
For the year 1891, $666,282.00.
For the year 1892, $604,144.00.
For the year 1893, $707,214.76.
For the year 1894, $635,561.76.

The above assessments are taken from the records of

same in office of State auditor, and with the great indebtedness of Alturas county was presented to the Legislature with petition to organize Blaine county and place burden of debt on a county able to pay same.

The officers and people of Alturas county placed on the desk of every member of the State Legislature, and upon the table of every officer of the State, a printed pamphlet petition signed by their representatives and senator, showing these items, and that the debt of Alturas county equaled 70 per cent of its actual value, and asked that its property and its liabilities be legislated upon a new county to be called Blaine.

By an act of the Legislature passed March 5, 1895, entitled "An Act to abolish the counties of Alturas and Logan, and to create and organize the county of Blaine," said Alturas county was abolished and ceased to exist; the county of Blaine was created, having a territorial area of 9,520 square miles, a voting population of 1,800 and an assessed valuation, as by the assessment rolls of 1894, of $2,410,688.72; and a large portion of said county of Blaine is valuable farming and agricultural lands; and upon the said County of Blaine, by the act creating the same, was legislated all the indebtedness of Alturas county, embracing the said Courthouse Bonded Indebtedness; and it was enacted that the said county of Blaine should assume and pay the same; and thereafter the said county of Blaine did assume and promise to pay the same.

On the 18th day of March, 1895, the Legislature of Idaho created out of the then county of Blaine, the county of Lincoln, cutting off from Blaine county about 2,600 square miles of territory, and taking 525 of its voting

population, and about $990,000 of its assessed valuation, leaving to Blaine county a territorial area of 6,920 square miles, a voting population of 1,275 male electors, and a tax roll of $1,410,000; and the said act creating Lincoln county provided that Lincoln county should pay its proportionate share, based on said assessed valuation, of the indebtedness of Blaine county, including the said Courthouse Bonded Indebtedness, and gave to said Lincoln county no portion or interest in the resources or debts due to Blaine county, amounting to the sum of $130,000; and since the creation of said Lincoln county such proceedings have been had that Blaine county has a judgment against Lincoln county, as its proportion of said indebtedness, including said Courthouse Bonded Indebtedness, for the sum of $238,446.27, with interest amounting to over $50,000.00; and said Lincoln county is and was by said act made and obligated to pay to the said Blaine county nearly one-half of the said Courthouse Bonded Indebtedness; and no part of said legislative debt due from Lincoln county to Blaine county has been paid; and that Blaine county has assumed the said Courthouse Bonded Indebtedness, and has agreed to pay the same, and has demanded of Lincoln county its proportion of all of the same, as provided for under said act of apportionment of said indebtedness; that Blaine county has never denied its assumption and liability to pay said Bonded Courthouse Indebtedness to plaintiff, and other holders of said bonds prior to or otherwise than the refusal and neglect of the treasurer of Blaine county to pay the indebtedness herein sued for, when demand was made

thereon and therefor within ten days prior to the time of the bringing of this action.

That Lincoln county has not yet paid to Blaine county any portion of said Bonded Courthouse Indebtedness; that when the same is paid it enters into said fund for provision of said bonded debt, among others, and can be used by Blaine county for no other purpose except for the discharging of said debt legislated upon it at time of its creation; and to aid it in payment of same the said proportionate indebtedness was legislated upon Lincoln county at time of its creation, has been claimed by Blaine county, and has been by a competent Court having jurisdiction of the matter and the parties allowed to be due to Blaine county from Lincoln county.

That soon after the said creation of Blaine county, and in March, 1895, former officers of said Logan county and residents and tax payers of such portion of Blaine county as had been theretofore in Logan county, denied the legality of the said act creating Blaine county, and brought suits and proceedings in the Supreme Court of Idaho to have said act declared void and of no effect; and in said suits and legal proceedings the issue was, among others, the legality of placing upon the people and property of what had been Logan county this or any portion of this said indebtedness of Alturas county, and such proceedings were had that the said Court held said act and said provision legal and valid and binding upon all.

In the allegations of this amended complaint, wherein they differ from the original complaint, it is not meant nor intended to be alleged that the cause of action is

based upon any indebtedness other than that originally created by the bonds and coupons herein described, and that subsequently imposed upon the defendant county by the said act.

Wherefore, plaintiff demands judgment against defendant, for the sum of ten thousand five hundred ninety dollars ($10,590), with interest on $9,000, the amount of the claim and principal sum of said bonds, from the first day of November, 1891, at the rate of ten per cent per annum; and like interest on $540, the amount of the face of said coupons No. 7, from the first day of January, 1890; and like interest on $540, the amount of the face of said coupons No. 8, from the first day of January, 1891; and like interest on $440, the amount of the face value of said coupons No. 8, from November 1, 1891; and for like interest on said judgment; and for plaintiff's costs and disbursements in this action.

SELDEN B. KINGSBURY,
Attorney for Plaintiff.

County of Ada.
State of Idaho, } ss.

Selden B. Kingsbury, being duly sworn, deposes and says: I am attorney for the plaintiff in the above-entitled action; I have read the foregoing complaint and know the contents thereof, and that the same is true of my own knowledge, except as to matters therein stated to be on information and belief, and as to those matters I believe it to be true. My sources of information are books, records, and papers relating to said counties.

and to suits and fiscal matters connected therewith, and the affidavits of plaintiff herein. I make this affidavit for and on behalf of plaintiff, because plaintiff is not in and does not reside in Ada county, where I reside.

SELDEN B. KINGSBURY,

Subscribed and sworn to before me this 28th day of Feb., 1898.

[Seal] A. L. RICHARDSON,
Clerk of U. S. Circuit Court for Idaho.
By H. L. Richardson,
Deputy.

[Endorsed]: No. 136. U. S. Circuit Court, District of Idaho. Frank C. Robertson, Plaintiff, v. Blaine County, Defendant. Amended Complaint. Filed Feb. 28th, 1898. A. L. Richardson, Clerk. By H. L. Richardson, Deputy. Selden B. Kingsbury, Attorney for Plaintiff.

In the Circuit Court of the United States, District of Idaho.

FRANK C. ROBERTSON,
Plaintiff,
vs.
BLAINE COUNTY,
Defendant.

Demurrer to Amended Complaint.

Comes now the above-named defendant and demurs to the plaintiff's amended complaint herein, and as ground of demurrer specifies:

That the said amended complaint does not state facts sufficient to constitute a cause of action.

That the alleged cause of action in said amended complaint set forth is barred by the provisions of section 4052 of the Revised Statutes of the State of Idaho.

Wherefore, defendant prays judgment whether it shall further answer the said amended complaint and for such further orders as may be proper in the premises.

LYTTLETON PRICE,
Defendant's Attorney.

[Endorsed]: No. 136. In the U. S. Circuit Court of the United States, District of Idaho. Frank C. Robertson v. Blaine County. Demurrer to amended complaint. Filed March 1, 1898. A. L. Richardson, Clerk.

In the Circuit Court of the United States, in and for the Central Division of the District of Idaho.

FRANK C. ROBERTSON,
Plaintiff,
vs.
BLAINE COUNTY,
Defendant.

Order Sustaining Demurrer to Amended Complaint.

On this 1st day of March, 1898, this cause came on to be heard upon the demurrer to the amended complaint herein, Selden B. Kingsbury, Esq., appearing as counsel for plaintiff and Lyttleton Price, Esq., for the defendant, and after argument by the respective counsel:

It is ordered that said demurrer be, and the same is hereby, sustained.

JAS. H. BEATTY,
Judge.

To the order sustaining the demurrer to the said amended complaint, the plaintiff by his counsel, Selden B. Kingsbury, Esq., then and there excepted in due form of law, which exception is hereby allowed.

March 1, 1898.

JAS. H. BEATTY,
Judge.

[Endorsed]: No. 136. U. S. Circuit Court, District of Idaho. Frank C. Robertson, v. Blaine County. Order sustaining demurrer to amended complaint and exceptions. Filed March 1, 1898. A. L. Richardson, Clerk.

In the Circuit Court of the United States, in and for the Central Division of the District of Idaho.

FRANK C. ROBERTSON,
Plaintiff,
vs.
BLAINE COUNTY,
Defendant.

Judgment.

This cause came regularly on to be heard upon the demurrer to the amended complaint herein, Selden B. Kingsbury, Esq., appearing as counsel for plaintiff and Lyttleton Price, Esq., for the defendant. After argument by the respective counsel and upon consideration the Court ordered that said demurrer be sustained, and

the said plaintiff by his said counsel declining to further plead in said cause—

It is therefore, by virtue of the law and by reason of the premises aforesaid, ordered and adjudged that said plaintiff take nothing by his complaint, and that the said defendant, Blaine county, do have and recover of and from Frank C. Robertson, the said plaintiff, its costs and disbursements herein expended, amounting to the sum of $20.60, and that execution issue therefor.

Dated March 1st, 1898.

JAS. H. BEATTY,
Judge.

In the Circuit Court of the United States for the District of Idaho.

FRANK C. ROBERTSON,
vs.
BLAINE COUNTY,
No. 136.

Clerk's Certificate to Judgment Roll.

I, the undersigned clerk of the Circuit Court of the United States for the District of Idaho, do hereby certify that the foregoing papers hereto annexed, together with the bill of exceptions, constitute the judgment roll in the above-entitled action.

Attest my hand and the seal of said Court this 1st day of March, 1898.

[Seal] A. L. RICHARDSON,
Clerk.

[Endorsed]: In the Circuit Court of the United States for the District of Idaho. Judgment Roll No. 136. Frank C. Robertson v. Blaine County. Register No. 1. Filed March 1, 1898. A. L. Richardson, Clerk.

In the Circuit Court of the United States, District of Idaho, and in the Central Division thereof.

FRANK C. ROBERTSON,
Plaintiff,
vs.
BLAINE COUNTY,
Defendant.

Stipulation and Order Extending Time to File Bill of Exceptions.

March 1st, 1898.

In the above-entitled action the plaintiff may have twenty days in which to prepare and file bill of exceptions.

LYTTLETON PRICE,
Attorney for Defendant.

Plaintiff allowed time as above stipulated.
March 1, 1898.

BEATTY,
Judge.

[Endorsed]: No. 136. In the U. S. Circuit Court of the District of Idaho. Frank C. Robertson v. Blaine County. Stipulation and order extending time, etc. Filed March 1st, 1898. A. L. Richardson, Clerk.

In the Circuit Court of the United States for the District of Idaho and in the Central Division thereof.

FRANK C. ROBERTSON,
Plaintiff,
vs.
BLAINE COUNTY,
Defendant.

Plaintiff's Bill of Exceptions.

Bill of Exceptions.

Be it remembered that on the 1st day of March, 1898, this cause came regularly on for hearing before the Hon. James H. Beatty presiding, on the amended complaint and the demurrer to the amended complaint, and the demurrer being before the Court, and being argued by counsel for the respective parties, the matter was submitted for decision of the Court; and the Court being fully advised, rendered its decision on same day, and sustained the said demurrer, and made and entered the following order, to-wit:

"It is ordered that said demurrer be, and the same is, hereby sustained.

JAMES H. BEATTY,
Judge."

To which order sustaining said demurrer counsel for plaintiff then and there duly excepted, and the same was allowed and was written beneath said order as follows: "To the order sustaining the demurrer to the said amended complaint the plaintiff, by his counsel, Selden B.

Kingsbury, Esq., then and there excepted in due form of law, which exception is hereby allowed.

March 1st, 1898.

JAMES H. BEATTY,
Judge."

And thereupon judgment was made, rendered, and entered in favor of defendant and against plaintiff, and is in words and figures as follows:

In the Circuit Court of the United States for the District of Idaho, and in the Central Division thereof.

FRANK C. ROBERTSON,
Plaintiff,
vs.
BLAINE COUNTY,
Defendant.

Judgment.

This cause came regularly on to be heard upon the demurrer to the amended complaint herein, Selden B. Kingsbury, Esq., appearing as counsel for plaintiff, and Lyttleton Price, Esq., for the defendant. After argument by the respective counsel, and upon consideration, the Court ordered that said demurrer be sustained, and the said plaintiff, by his said counsel, declining to further plead in said cause—

It is therefore, by virtue of the law and by reason of the premises aforesaid, ordered and adjudged that said plaintiff take nothing by his complaint, and that the said defendant, Blaine county, do have and recover of and from Frank C. Robertson, the said plaintiff, its costs and disbursements herein expended, amounting to the sum of $20.60, and that execution issue therefor.

Dated March 1st, 1898.

JAS. H. BEATTY,

Judge."

To which ruling, order, decision, and judgment, and to each and all thereof, the plaintiff, by its counsel, then and there duly objected and excepted, and exception allowed.

Wherefore, I, James H. Beatty, Judge, do hereby allow said exception, and this plaintiff's bill of exceptions, and sign, seal, and make the same of record herein.

JAS. H. BEATTY,

Judge.

[Endorsed]: No. 136. In the U. S. Circuit Court, District of Idaho. Frank C. Robertson v. Blaine County. Bill of exceptions. Filed March 1st, 1898. A. L. Richardson, Clerk.

In the Circuit Court of the United States in and for the District of Idaho and in the Central Division thereof.

FRANK C. ROBERTSON,
Plaintiff,
vs.
BLAINE COUNTY,
Defendant.

Stipulation.

Acceptance of Service of Bill of Exceptions.

I hereby acknowledge service of the bill of exceptions, waive time, and make no objection to the settling and allowance of the same at once.

Dated March 1st, 1898.

LYTTLETON PRICE,
Attorney for Defendant.

[Endorsed]: No. 136. U. S. Circuit Court, District of Idaho. Frank C. Robertson, v. Blaine County. Acceptance of service of copy of bill of exceptions. Filed March 1st, 1898. A. L. Richardson, Clerk.

In the Circuit Court of the United States in and for the District of Idaho.

FRANK C. ROBERTSON,
Plaintiff,
vs.
BLAINE COUNTY,
Defendant.

Petition for Writ of Error.

The above-named plaintiff, Frank C. Robertson, conceiving himself aggrieved by the decision, order, and judgment of this Court made, rendered, and entered on the first day of March, 1898, in the above-entitled action, doth pray for a writ of error from said decision, order, and judgment to the United States Circuit Court of Appeals, in and for the Ninth Judicial Circuit of the United States, and prays that a writ of error may be allowed, and that a transcript and record of the proceedings upon which said judgment, duly authenticated, may be sent to the said Court of Appeals for review and for the purpose of having said errors corrected, as shown in the record herein, and as shown by the bill of exceptions and assignments of error filed herewith and made a part hereof.

SELDEN B. KINGSBURY,
Atty. for Petitioner.

Order Allowing Writ of Error.

On consideration of the foregoing petition, and the assignment of errors accompanying the same, it appearing that this is a proper cause therefor, it is ordered that the

said writ of error be allowed as prayed; and the said petitioner is required, before the issuance of said writ, to file his bond for the costs thereof, according to law, in the sum of $500.00.

JAS. H. BEATTY,
Judge Presiding as Circuit Judge.

[Endorsed]: No. 136. In the U. S. Circuit Court for the District of Idaho. Frank C. Robertson, v. Blaine County. Petition for writ of error and order allowing same. Filed March 17th, 1898. A. L. Richardson, Clerk.

In the Circuit Court of the United States for the District of Idaho.

FRANK C. ROBERTSON,
Plaintiff,
vs.
BLAINE COUNTY,
Defendant.

Assignment of Errors.

Comes now the plaintiff, Frank C. Robertson, and upon the record of this action assigns the following errors committed by the Circuit Court to his prejudice, to-wit:

First.—The Court erred in its conclusion of law in holding and deciding that the amended complaint herein does not state facts sufficient to constitute a cause of action,

and in sustaining the demurrer to the said amended complaint.

Second.—That the Court erred in holding and deciding that the cause of action set forth in the amended complaint was, at time of bringing this action, barred by the provisions of section 4052 of the Revised Statutes of Idaho, and in sustaining the demurrer to the amended complaint herein.

Third.—That the Court erred in sustaining the demurrer to the amended complaint herein.

Fourth.—That the Court erred in holding and deciding and ordering that the plaintiff take nothing by this action, and that defendant have judgment against plaintiff for costs.

SELDEN B. KINGSBURY,
Attorney for Plaintiff.

[Endorsed]: No. 136. In the Circuit Court of the United States for the District of Idaho. Frank C. Robertson v. Blaine County. Assignment of errors. Filed March 17th, 1898. A. L. Richardson, Clerk.

Bond on Writ of Error.

Know All Men by These Presents, that we, Frank C. Robertson, as principal, and Peter Sonna and Frank R. Coffin, as sureties, are held and firmly bound unto Blaine county, a public corporation, and county of Idaho in the full and just sum of five hundred (500) dollars, to be paid to the said Blaine county, its certain attorney, executors,

administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents.

Sealed with our seals and dated this 17th day of March, in the year of our Lord one thousand eight hundred and ninety-eight.

Whereas, lately at a Circuit Court of the United States, for the District of Idaho, in a suit depending in said court between said Frank C. Robertson as plaintiff and said Blaine county as defendant, a judgment was rendered against the said Frank C. Robertson, and the said plaintiff Frank C. Robertson having obtained from said Court a writ of error to reverse the judgment in the aforesaid suit, and a citation directed to the said defendant. Blaine county, citing and admonishing it to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit to be holden at San Francisco, in the State of California, on the 15th day of April next.

Now, the condition of the above obligation is such, that if the said Frank C. Robertson shall prosecute said writ of error to effect, and answer all damages and costs, if he fail to make said plea good, then the above obligation to be void; else to remain in full force and virtue.

FRANK C. ROBERTSON,
By S. B. KINGSBURY, his Atty. [Seal]
PETER SONNA. [Seal]
FRANK R. COFFIN. [Seal]

United States of America,
District of Idaho. } ss.

Peter Sonna and Frank R. Coffin, being duly sworn, each for himself, deposes and says that he is a householder in said District, and is worth the sum of five hundred dollars, exclusive of property exempt from execution, and over and above all debts and liabilities.

PETER SONNA,
FRANK R. COFFIN,

Subscribed and sworn to before me this 17th day of March, A. D. 1898.

A. L. RICHARDSON,
Clerk of U. S. Circuit Court District of Idaho.

[Endorsed]: No. 136. United States Circuit Court for the Ninth Circuit, District of Idaho. Frank C. Robertson v. Blaine County. Bond on writ of error. Form of bond and sufficiency of sureties approved. Beatty, Judge. Filed March 17th, 1898. A. L. Richardson, Clerk.

Citation.

United States of America—ss.

The President of the United States, to Blaine County, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals, for the

Ninth Circuit, to be holden at the city of San Francisco, in the State of California, on the 15th day of April next, pursuant to a writ of error in the clerk's office of the Circuit Court of the United States for the District of Idaho, wherein Frank C. Robertson is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff as in the said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Given under my hand at Boise City, in said District, this 17th day of March, 1898.

[Seal] JAS. H. BEATTY,
Judge.

Attest:
A. L. RICHARDSON,
Clerk.

Service of the foregoing citation by copy admitted this 22d day of March, 1898.

LYTTLETON PRICE,
Attorney for Defendant in Error.

[Endorsed]: Filed March 23d, 1898. A. L. Richardson, Clerk.

Writ of Error.

United States of America—ss.

The President of the United States, to the Honorable, the Judges of the Circuit Court of the United States for the District of Idaho, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court, before you, or some of you, between Frank C. Robertson, plaintiff in error, and Blaine county, defendant in error, a manifest error hath happened, to the great damage of the said Frank C. Robertson, plaintiff in error, as by his complaint appears;

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the city of San Francisco, in the State of California, on the 15th day of April next, in the said Circuit Court of Appeals, to be then and there held, that the record and proceedings aforesaid being inspected the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable MELVILLE W. FULLER, Chief Justice of the Supreme Court of the United States, the 17th day of March, A. D. 1898.

[Seal] A. L. RICHARDSON,

Clerk of the United States Circuit Court for the District of Idaho.

[Endorsed]: Filed March 23d, 1898. A. L. Richardson, Clerk.

Service of the within writ of error by copy admitted this 22d day of March, 1898.

LYTTLETON PRICE,
Attorney for Defendant in Error.
S. B. KINGSBURY,
Attorney for Plaintiff.

Order to Transmit Record.

And thereupon it is ordered by the Court here that a transcript of the record and proceedings in said cause aforesaid, together with all things thereunto relating, be transmitted to the said United States Circuit Court of Appeals for the Ninth Circuit, and the same is transmitted accordingly.

Attest:

[Seal] A. L. RICHARDSON,
Clerk.

In the Circuit Court of the United States for the Central Division of the District of Idaho.

FRANK C. ROBERTSON,
vs.
BLAINE COUNTY. } No 136.

Clerk's Certificate to Transcript.

I, A. L. Richardson, clerk of the Circuit Court of the United States, in and for the District of Idaho, do hereby certify the foregoing transcript of pages, numbered from 1 to 70, inclusive, to be a full, true, and correct copy of the pleadings and proceedings in the above-entitled

cause, and that the same together constitute the return to the annexed writ of error.

I further certify that the cost of said record, amounting to the sum of $42.40, has been paid by the said plaintiff in error.

Witness my hand and the seal of said Court affixed at Boise, Idaho, this 23d day of March, 1898.

[Seal] A. L. RICHARDSON,
Clerk.

[Endorsed]: No. 441. In the United States Circuit Court of Appeals for the Ninth Circuit. Frank C. Robertson, Plaintiff in Error, v. Blaine County, Defendant in Error. Transcript of Record. Error to the Circuit Court of the United States for the District of Idaho, Central Division.

Filed March 28, 1898.

F. D. MONCKTON,
Clerk.

By Meredith Sawyer,
Deputy Clerk.